IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

OP.No. 37618 of 2002(C)
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PETITIONER:
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M/S.TREAD AND INDUSTRIAL RUBBER
EXTRUSIONS, NO.6, DEVELOPMENT PLOT, VAIKOM,
REPRESENTED BY ITS MANAGING PARTNER-MANI JACOB

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:
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1. SALES TAX OFFICER, VAIKOM.

2. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 37618/2002

ORDER IN CMP NO. 63518/2002 IN OP NO. 37618/2002

DISMISSED.

17/09/2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER IN I.A.NO. 2882/2006 IN OP NO. 37618/2002

DISMISSED.

17/09/2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE)

**APPENDIX**

PETITIONER'S EXHIBITS

P1 : COPY OF ORDER DATED 01/09/97 OF THE 1ST RESPONDENT.

P2 : COPY OF LETTER DATED 24/04/98 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

P3 : COPY OF RETURN IN FORM NO.9 FOR THE YEAR 93-94 FILED by the PETITIONER.

P4 : COPY OF PENALTY ORDER DATED 01/07/99 OF 1ST RESPONDENT.

P5 : COPY OF OBJECTION DATED 14/06/99 SUBMITTED BY THE PETITIONER TO 1ST RESPONDENT.

P6 : COPY OF REVISION ORDER DATED 07/12/2000 OF THE DY.COMMISSIONER, COMMERCIAL TAXES, KOTTAYAM.

P7 :COPY OF GROUNDS OF REVISION SUBMITTED BEFORE 2ND RESPONDENT DATED 12/01/2001.

P8 : COPY OF HEARING NOTE DATED 15/12/2001 SUBMITTED TO 2ND RESPONDENT.

P9 : COPY OF LIST OF FORM 18 RETURNED BY PARTIES AGAINST WHICH CERTIFIES AS PER SRO 1541/93.

P10 : COPY OF ORDER OF THE 2ND RESPONDENT DATED 05/11/2002.

// TRUE COPY //

PA TO JUDGE.

jg

**C.N.RAMACHANDRAN NAIR, J.**

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**O.P. No. 37618 of 2002**

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**Dated, this the 17th day of September, 2007**

**J U D G M E N T**

Heard learned Senior counsel appearing for the petitioner and learned Government Pleader. The order under challenge is penalty levied under Section 45A of the KGST Act, which is modified in first revision and confirmed in second revision. Petitioner-industrial unit purchased raw materials by availing concessional rate under Section 5(3) of the KGST Act. However, contrary requirement of the provision that is sale of the product and payment of tax, petitioner stock transferred the same to outside the State. The violation was therefore admitted and penalty was imposed. Even though learned counsel for the petitioner submitted that differential tax was paid by the petitioner, it is seen that petitioner has made notional payment by adjustment against exemption available. In any case, I find penalty is reduced in first revision to equal the amount of tax for the item stock transferred and the penalty is levied after two years of availing concession, which means State has lost interest on differential tax for two years. In the circumstances and since penalty levied is only equal the amount of tax, which is

compensatory in nature, there is no scope for interference and this original petition is accordingly dismissed.

However, there will be direction to the respondents to waive 50% of the interest payable on the penalty amount, if balance penalty is paid on or before 31/10/2007.

**(C.N.RAMACHANDRAN NAIR, JUDGE.)**

jg